

Exhibit C

IC0225b.txt

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2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

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5 IN RE:

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7 DELPHI CORPORATION, et al.,

Case No.
05-44481
(RDD)

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11 DEPOSITION of MARGARET MALLOY, taken by
12 Debtors at the offices of U.S. Attorney's Office,
13 Southern District of New York, 86 Chambers Street, New
14 York, New York 10007, on Monday, February 25, 2008
15 commencing at 7:40 p.m., before I. Iris Cooper, a
16 Certified Shorthand (Stenotype) Reporter and Notary
17 Public within and for the State of New York.

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A P P E A R A N C E S:

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SKADDEN, ARPS, SLATE, MEAGHER & FLOM, L.L.P.
Attorneys for Debtor
333 West Wacker Drive
Chicago, Illinois 60606-1285

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BY: JOHN K. LYONS, Esq., of Counsel

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NEW YORK

U.S. ATTORNEY'S OFFICE SOUTHERN DISTRICT OF

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Attorneys for Witness
86 Chambers Street
New York, New York 10007

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BY: MATTHEW L. SCHWARTZ, Esq., of Counsel

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IT IS HEREBY STIPULATED AND

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AGREED that the filing and sealing of
the within deposition be, and the
same are hereby waived;

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IT IS FURTHER STIPULATED AND

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AGREED that all objections, except as

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8 to the form of the question, be and
9 the same are hereby reserved to the
10 time of the trial;
11 IT IS FURTHER STIPULATED AND
12 AGREED that the within deposition may
13 be sworn to before any Notary Public
14 with the same force and effect as if
15 sworn to before a Judge of this
16 Court;
17 IT IS FURTHER STIPULATED that
18 the transcript is to be certified by
19 the reporter.
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2 M A R G A R E T M A L L O Y, called as a
3 witness, having been first duly sworn by
4 I. Iris Cooper, a Notary Public within and
5 for the State of New York, was examined and
6 testified as follows:
7 MR. SCHWARTZ: John, before we
8 start, we've already told you that the
9 answers to a lot of the questions
10 today are going to evoke
11 attorney-client privilege or work

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12 product or government deliberative
13 process information. As I also
14 explained, we'll try to give you some
15 latitude. I assume that we can agree
16 up front that any answers that are
17 given today won't affect broader
18 waivers of the privilege.

19 MR. LYONS: I don't think
20 we're in position to agree to that
21 because we no longer need to follow up
22 on answers that the deponent gives, so
23 I don't think we can agree right now
24 to that. So I think what we need to
25 do is just proceed forward, and you

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2 can certainly state your objections on
3 the record which you deem necessary to
4 safeguard privileges, instruct the
5 witness not do answer. Delphi in turn
6 will seek whatever inference from the
7 judge resulting from that invocation
8 of privilege.

9 DIRECT EXAMINATION

10 BY MR. LYONS:

11 Q Can you please state your name for
12 the record.

13 A Margaret Malloy.

14 Q Ms. Malloy, what is your current
15 occupation?

16 A I'm a trial attorney at the EEOC.

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17 Q And when did you obtain that
18 position?
19 A I began on December 26, 2006.
20 Q And what did you do before that,
21 before you took that position?
22 A I was an associate at a law firm.
23 Q And what's the name of the law firm?
24 A Gladstein, Reif & McGinnis.
25 Q How long were you an associate

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1
2 there?
3 A Six years.
4 Q Before you became an associate at
5 Gladstein, what was your occupation?
6 A I clerked for a judge.
7 Q And who did you clerk for?
8 A Denise Coat.
9 Q What type of judge was she?
10 A U.S. District Court judge.
11 Q For the Southern District of
12 New York?
13 A Yes.
14 Q And before you clerked for the U.S.
15 District Court for the Southern District of
16 New York, did you have any other occupations or
17 jobs?
18 A Legal jobs?
19 Q Legal jobs first.
20 A I graduated from law school right

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21 before my clerkship.

22 Q So you went to clerk straight from
23 law school?

24 A Yes.

25 Q And before you went to law school,

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2 did you have any other jobs?

3 A Yes, I did.

4 Q Can you briefly go through your
5 jobs, briefly?

6 A Immediately before I went to law
7 school, I had been working for Clean Water Action.

8 Q In your other jobs, did you have any
9 other investigative duties, with any of your jobs
10 prior to becoming a clerk for the Southern
11 District of New York.

12 A No, I don't think so.

13 Q What areas of law did you practice
14 as an associate of Gladstone?

15 A Gladstein.

16 Q I'm sorry. Gladstein.

17 A Labor and employment.

18 Q Was that for your six years there?

19 A Yes.

20 Q So you testified that you had joined
21 the U.S. Attorney's office on December 26, 2006.

22 MR. SCHWARTZ: EEOC.

23 Q EEOC. I'm sorry. December 26,
24 2006. When did you first become involved in the
25 Straughter matter?

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2 A I don't recall exactly.

3 Q Is there anything that would refresh
4 your recollection on that?

5 MS. GROSSMAN: You can answer
6 yes or no.

7 THE WITNESS: There might be
8 something that would refresh my
9 recollection, but it might be
10 privileged.

11 Q well, let's look at your
12 declaration, which I'll mark as deposition Exhibit
13 No. 1.

14 (Declaration of Margaret
15 Malloy was marked as Exhibit No. 1 for
16 identification on this date.)

17 Q And also to be marked as Exhibit No.
18 2 will be the exhibits to the declaration.

19 (Exhibits to declaration of
20 Margaret Malloy was marked as Exhibit
21 No. 2 for identification on this
22 date.)

23 MR. LYONS: For the witness's
24 copy, we actually inserted tabs. For
25 my copy and your copy we don't have

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2 tabs.

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3 Q Ms. Malloy, in connection with the
4 motion for leave to file late claim filed by the
5 EEOC in the Delphi bankruptcy case, you submitted
6 a declaration and exhibits. Can you please review
7 Exhibit Nos. 1 and 2 and confirm for us that those
8 are true and correct copies of your declaration
9 and attached exhibits?

10 A Cursory review, they appear to be
11 true and correct copies.

12 Q Thank you. If you look at Paragraph
13 No. 3 of Exhibit No. 1, which is your declaration,
14 you state that you're the trial attorney assigned
15 to represent the EEOC in the Equal Employment
16 Opportunity Commission versus Delphi Corp., which
17 is No. 07 Civ. 640 which is pending in the U.S.
18 District Court for the Western District of
19 New York. Is that true?

20 A It's U.S. Civ. 6470.

21 Q I'm sorry. Is that true that you're
22 the trial attorney assigned to the represent the
23 EEOC in that matter?

24 A Yes.

25 Q Do you recall when you were assigned

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1
2 to represent the EEOC in that matter?

3 A I don't recall. It was before the
4 lawsuit was filed.

5 Q Do you know how long before the
6 lawsuit it was filed?

7 A Within a few months before the

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8 lawsuit was filed.

9 Q why don't we take a look at
10 Paragraph No. 20 of your declaration, your
11 declaration states, and I'm just paraphrasing
12 here. I'm omitting certain of the words of your
13 declaration. It states that on June 19, 2007, the
14 case which was the charge filed by Mr. Straughter
15 was forwarded to the legal unit of the EEOC's
16 New York district office?

17 A That's correct, it states that.

18 Q Does that refresh your recollection
19 as to when you were assigned this matter?

20 MR. SCHWARTZ: It's a yes or
21 no question.

22 THE WITNESS: No.

23 Q Okay. Let's go back to your
24 declaration. We'll take it paragraph by
25 paragraph. If you can look at Paragraph No. 4, it

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1
2 states that on or about August 28, 2006, the EEOC
3 national call center was first contacted about a
4 potential claim of discrimination by Stanley
5 Straughter, a Delphi employee in Rochester,
6 New York.

7 Do you have any personal knowledge
8 as to that contact with the EEO national call
9 center by Mr. Straughter?

10 A No.

11 Q Paragraph No. 5 states, over the

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12 next several months, the EEOC worked with
13 Straughter to prepare and finalize a formal charge
14 of discrimination.

15 Is it true that over the next
16 several months the EEOC worked with Straughter to
17 prepare and finalize a formal charge of
18 discrimination?

19 A Yes, that's correct.

20 Q Did you work on this effort?

21 MR. SCHWARTZ: Objection.
22 calls for privileged communications,
23 attorney work product, government
24 deliberative process information.

25 Q Who worked for Mr. Straughter --

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2 strike that. You can answer the question.

3 A I'm sorry. Which question is
4 pending?

5 Q Did you work with Mr. Straughter --

6 MR. SCHWARTZ: When I assert
7 privileges, do I need to say every
8 time that I also instruct her not to
9 answer?

10 MR. LYONS: Yes.

11 MR. SCHWARTZ: I instruct her
12 not to answer the previous question.

13 MR. LYONS: Please note the
14 witness is conferring with counsel.

15 THE WITNESS: He told me I can
16 make that point. So the point was

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17 that I was not yet employed by the
18 EEOC at that time.
19 Q So up until December 26, 2006, you
20 did not have any involvement in the investigation
21 of Mr. Straughter's charge?
22 A That's correct.
23 Q Have you spoken with Mr. Straughter?
24 A Yes, I have.
25 Q When was the first time you spoke

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2 with Mr. Straughter?
3 MR. SCHWARTZ: Objection.
4 Calls for attorney work product and
5 government deliberative process
6 information.
7 MR. LYONS: And you instruct
8 the witness not to answer?
9 MR. SCHWARTZ: And I instruct
10 the witness not to answer. I think I
11 can say for the record that whenever I
12 invoke the attorney-client privilege,
13 the attorney work product with the
14 government deliberative process of
15 privilege that I'm also instructing
16 the witness not to answer. It is a
17 continuing instruction.
18 THE WITNESS: I'll just add
19 that the EEOC takes the position that
20 our communications with claimants in

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21 our cases are protected by the
22 attorney-client privilege as well.
23 MR. SCHWARTZ: So also the
24 attorney-client privilege trifecta.
25 Q Who is the primary investigator of

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2 Mr. Straughter's charge?
3 A Jennifer Carlo.
4 Q Has she been the primary
5 investigator from the time that Mr. Straughter
6 made his allegations to the EEOC through today?
7 A My knowledge of that is based on the
8 documents that you have before you. Based on
9 those documents, the answer to that is yes.
10 Q Do you know from your personal
11 knowledge whether Ms. Carlo was the primary
12 investigator from the time that Mr. Straughter
13 made his allegations through today?
14 A Since I wasn't working for the
15 agency prior to December 26, 2006, no.
16 Q From the time that you became
17 involved in the Straughter charge through today,
18 has Ms. Carlo been the primary investigator for
19 Mr. Straughter's charge?
20 A Yes.
21 Q Have there been any other
22 investigators assigned to the charge in the EEOC's
23 lawsuit in the Western District of New York?
24 A Not to my knowledge.
25 Q Turn to Paragraph No. 13 of your

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2 declaration. Paragraph No. 13 states that on
3 January 31, 2007 Delphi responded to the EEOC's
4 request for information.

5 Does this refresh your recollection
6 as to when you first became involved in the
7 Straughter charge?

8 A No.

9 Q Do you recall receiving the response
10 that Delphi made to the EEOC's request on or about
11 January 31, 2007?

12 MR. SCHWARTZ: Are you asking
13 whether she received it on or about
14 January 31, 2007 or if she recalls
15 receiving the January 31, 2007
16 response?

17 Q whether you recall receiving the
18 January 31, 2007 response on or about January 31,
19 2007?

20 A No, I do not. I just mention that
21 if I had received something at that time and I do
22 not recall receiving anything, but if I did, the
23 only way I could have received it is from the
24 investigator, and that would be privileged
25 communication.

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2 Q Look at Paragraph No. 14. The

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3 second sentence states, therefore, on or about
4 February 26, 2007, the EEOC sent Delphi a second
5 request for information.

6 were you involved in formulating
7 that second request for information on or about
8 February 26, 2007?

9 MR. SCHWARTZ: Objection.
10 calls for attorney-client privilege,
11 work product protection, and
12 government deliberative process
13 privilege.

14 Q What is the basis for your statement
15 that on or about February 26, 2007 the EEOC sent
16 Delphi a second request for information?

17 A The EEOC's files.

18 Q That's your sole basis for that
19 statement?

20 A That's all that I can recall would
21 be the basis for that that is reflected in the
22 EEOC's investigative file.

23 Q Paragraph No. 15, at or about
24 April 4, 2007 Delphi finally responded to the
25 EEOC's second request for information, and it goes

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2 on and on. Were you involved in the EEOC's
3 receipt and analysis of Delphi's response to the
4 second request for information on or about
5 April 4, 2007?

6 MR. SCHWARTZ: Objection to
7 form. Also objection because it calls

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8 for attorney-client privileged
9 information, attorney work project,
10 and government deliberative process
11 privileged information.

12 Q Were you ever involved in analyzing
13 Delphi's response to the EEOC's second request for
14 information?

15 MR. SCHWARTZ: Objection to
16 form. Objection because it calls for
17 attorney-client privilege information,
18 attorney work product, and government
19 deliberative process privileged
20 information.

21 Q Paragraph No. 16 states, throughout
22 this give-and-take process with Delphi, the EEOC
23 simultaneously pursued other avenues of
24 investigating the charge of discrimination,
25 including collecting further information from

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2 Straughter. What avenues of investigation of the
3 charge of discrimination did the EEOC pursue?

4 MR. SCHWARTZ: Objection.
5 Calls for attorney-client privileged
6 information, attorney work product,
7 and government deliberative process
8 information, other than, of course,
9 what's stated in the declaration,
10 which is that the EEOC collected
11 further information from

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12 Mr. Straughter.
13 Q Let's read Paragraph No. 16.
14 Throughout this give-and-take process with Delphi,
15 the EEOC simultaneously pursued other avenues of
16 investigating the charge of discrimination,
17 including collecting further information from
18 Straughter.
19 Is your statement that the EEOC in
20 pursuing other avenues of investigation of the
21 charge of discrimination solely collected further
22 information from Straughter?
23 A No.
24 Q So apart from collecting
25 information, further information from Straughter,

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2 what other avenues of investigation did the EEOC
3 pursue relating to Mr. Straughter's charge of
4 discrimination?
5 MR. SCHWARTZ: Objection.
6 calls for attorney-client privileged
7 information, attorney work product,
8 and government deliberative process
9 privileged information.
10 Q As reflected in Paragraph No. 16,
11 did the EEOC ever discuss with any other employees
12 at Delphi any potential violations of the ADA
13 relating to medical release forms?
14 MR. SCHWARTZ: Objection.
15 Privileged. And can we agree to save
16 some breath that I can simply say

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17 privileged when I mean to invoke all
18 three of those privileges?

19 MR. LYONS: Yes. And if you
20 decide to drop one of the privies, why
21 don't you so note.

22 MR. SCHWARTZ: I certainly
23 will. I assume that your questions
24 about your investigation are questions
25 about prelitigation investigation;

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2 correct?

3 MR. LYONS: Unless otherwise
4 noted, I try to put a time frame that
5 I'm asking the question. I mean,
6 Paragraph No. 16, let's confirm that.
7 Paragraph No. 16 does not put a time
8 frame on it.

9 Q Is Paragraph No. 16 meant to just
10 cover the period prior to commencement of the
11 federal EEOC action.

12 A That's my understanding of Paragraph
13 No. 16.

14 Q Is Paragraph No. 16 based upon your
15 personal knowledge?

16 A Paragraph No. 16 is based on my
17 review of the investigative file.

18 Q Other than your review of the
19 investigative file, is there any basis, other
20 basis, for your statements in Paragraph No. 16?

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21 A I would like to confer with my
22 counsel as to whether or not my answer would be
23 privileged.
24 MR. LYONS: It asks for a yes
25 or no. Whether it goes into more than

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2 a yes or no, then I can understand why
3 there might be a --
4 MR. SCHWARTZ: I do appreciate
5 that. But given what you said at the
6 outset that there would be no waivers,
7 no subject matter waivers, we need to
8 be very careful.
9 MR. LYONS: Note conference
10 off the record.
11 (Whereupon, a conversation was
12 held off the record.)
13 Q What was the basis for your
14 statement in Paragraph No. 16 of the declaration?
15 A The investigative file. The
16 documents in the investigative file.
17 Q Did you have any other basis?
18 A No, not that I recall.
19 Q Paragraph Nos. 4, 5, 6, 7, 8, 9, 10,
20 11, 12, 13, 14, and 15, what was the basis for
21 your statements in those paragraphs?
22 A The EEOC's investigative file.
23 Q Did you have any other basis other
24 than the file for those statements?
25 A No.

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2 Q Paragraph No. 17, what was the basis
3 for your statement in Paragraph No. 17?

4 A The EEOC's investigative file.

5 Q Did you have any other basis for the
6 statement in Paragraph No. 17?

7 MR. SCHWARTZ: Objection.

8 THE WITNESS: Not that's not
9 privileged.

10 MR. SCHWARTZ: It's quotation
11 from a document that's dated. I'm not
12 sure exactly what you're getting at.

13 Q Can you answer the question?

14 A The basis for my statement in
15 Paragraph No. 17 is the document itself that's
16 quoted, the letter of determination.

17 Q Did you have any involvement in the
18 preparation of the conclusions contained in the
19 letter of determination?

20 MR. SCHWARTZ: Objection.

21 That is attorney work product,
22 attorney-client privileged
23 information, government deliberative
24 process privileged information.

25 MR. LYONS: I don't believe

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2 the fact of whether or not you were

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3 involved falls within any of those
4 privileges. Would you like to
5 reconsider your insertion, your
6 instruction not to answer?

7 MR. SCHWARTZ: Okay. No. I
8 think that it's privileged.

9 MR. LYONS: Okay. Just so I
10 understand to be clear, the U.S.'s
11 position is that your involvement or
12 non-involvement in the issuance of the
13 letter of determination is privileged?

14 MR. SCHWARTZ: I think that
15 your question was broader than the way
16 that you just phrased it to me. And
17 the question of how and when the EEOC
18 or any law enforcement agency staffs
19 cases and makes final decisions about
20 charges is privileged, both under the
21 attorney-client work product doctrine
22 and under the government deliberative
23 process privilege. That said, if you
24 want to try to rephrase your question,
25 maybe get a little bit closer.

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2 Q Were you involved in the EEOC's
3 issuance of it's letter of determination
4 referenced in Paragraph No.17 of your declaration?

5 MR. SCHWARTZ: Objection to
6 the form.

7 Q You can answer.

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8 A I don't know what it really means to
9 be involved in the issuance of the LOD.

10 Q Prior to May 22, 2007, were you
11 involved in the investigation referenced in the
12 first sentence of the block quote in Paragraph No.
13 17?

14 A My attorney is not objecting but I
15 think that calls for privileged information.

16 MR. SCHWARTZ: Okay. We'll
17 object on the basis of privilege.

18 MR. LYONS: So you're
19 instructing not to the answer and
20 we've got the protocol.

21 MR. SCHWARTZ: Yes.

22 MR. LYONS: And you're
23 instructing the witness not to answer?

24 MR. SCHWARTZ: Yes. I think,
25 John, that involved is a very

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2 difficult word in this context. You
3 might want to try and be clear with
4 specific reference to the last
5 question.

6 MR. LYONS: I put a clear
7 temporal limit on this. I said on or
8 before May 22, 2007 were you involved
9 in the investigation of
10 Mr. Straughter's charge of
11 discrimination that's referenced in

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12 the letter of determination that's set
13 forth in Paragraph No. 17 of your
14 declaration.

15 MR. SCHWARTZ: My point to you
16 is that involved is a very ambiguous
17 word in this context. Specifically,
18 it's ambiguous as to whether she was
19 involved as a lawyer or whether she
20 was involved as investigating.

21 Q Were you involved in any capacity on
22 or prior to May 22, 2007 in the Straughter charge
23 of discrimination?

24 A Yes.

25 Q And in what capacity were you

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1
2 involved?

3 A In my capacity as an attorney
4 legally involved in it.

5 Q Does Paragraph No. 17 refresh your
6 recollection as to when you became involved in the
7 Straughter charge of discrimination?

8 A Yes.

9 Q And based upon your refreshed
10 recollection, when do you believe you first became
11 involved in the Straughter charge of
12 discrimination?

13 A All I can say is that it was before
14 May 22, 2007.

15 Q If we go to the last sentence of
16 Paragraph No. 17, it states that the EEOC also

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17 informed Delphi that it would like to eliminate
18 the unlawful practices through informal methods of
19 conciliation and invited Delphi to discuss
20 settlement of the charge.

21 Do you recall having discussions
22 with Delphi regarding settlement of the charge on
23 or about May 22, 2007?

24 A No.

25 Q Paragraph No. 18 of your declaration

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2 references, and perhaps this might be more
3 efficient. If you can turn to Exhibit N to your
4 declaration. Is Exhibit N which you're reviewing
5 right now, is that, to the best of your knowledge,
6 Exhibit N to your declaration?

7 A Yes.

8 Q Do you recall seeing a copy of this
9 letter dated May 23, to Mr. Peterson at Delphi on
10 or about May 23, 2007?

11 A I don't recall when I saw it.

12 Q Were you involved in the preparation
13 of this letter which is Exhibit N to your
14 declaration?

15 MR. SCHWARTZ: Objection.
16 Privileged.

17 Q Your declaration states that the
18 following day, May 23, 2007, that the EEOC
19 contacted Delphi. What was the basis of the
20 statement that the EEOC contacted Delphi? What

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21 was your basis -- I'm sorry. Let me back up.
22 Paragraph No. 18 of your declaration
23 states that following day on May 23, 2007 the EEOC
24 contacted Delphi to begin conciliation efforts and
25 outlined a comprehensive remedy for Delphi's

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2 discriminatory practices.
3 what was the basis for your
4 statement in Paragraph No. 18 that I just --
5 A Exhibit A, the letter.
6 Q Is there any other basis?
7 A I don't recall whether the letter
8 was faxed in addition to being mailed. The May
9 23rd date comes from the letter.
10 Q Were you aware of any other contacts
11 other than the letter marked as Exhibit N to
12 Delphi discussing the subject matter of Paragraph
13 No. 18 of your letter?
14 A Not that I recall.
15 Q To your declaration. I'm sorry.
16 If you can turn to Paragraph No. 16
17 of your letter, Exhibit N to your declaration.
18 A The EEOC's letter?
19 Q Correct. It begins with respondent
20 will make charging party whole for all losses
21 suffered as a result of discrimination?
22 A Yes.
23 Q Including lost wages and fringe
24 benefits plus interest?
25 A I see that.

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2 Q Did the EEOC make any calculation as
3 to the amount necessary to make whole
4 Mr. Straughter for losses suffered as a result of
5 discrimination?

6 MR. SCHWARTZ: Objection.
7 Privileged. I also have to say this
8 is a bit far outside the purpose of
9 this deposition.

10 Q In Paragraph No. 17 of Exhibit N,
11 the letter states, respondent will compensate
12 charging party for emotional harm and distress,
13 pain, suffering, humiliation or embarrassment in
14 the amount of \$115,000.

15 Were you involved in the calculation
16 of the \$115,000 that the EEOC was necessary to
17 compensate Mr. Straughter for emotional harm and
18 distress, pain, suffering, humiliation or
19 embarrassment?

20 MR. SCHWARTZ: Objection.
21 Privileged. Also irrelevant.

22 Q Paragraph No. 19 of Exhibit N to
23 your declaration states, respondent will provide,
24 make whole relief for any and all other
25 individuals determined to have been harmed by

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1
2 respondent's discriminatory practices.

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3 Are you aware of any other
4 individuals who have suffered harm as a result of
5 Delphi's alleged discriminatory practices
6 referenced in the EEOC's lawsuit against Delphi?

7 MR. SCHWARTZ: Objection.
8 Privileged. Also relevance. At this
9 point, could you explain the relevance
10 of these questions about damages in
11 this suit. I understand they go to
12 potential value of our claim to
13 bankruptcy, but certainly not to its
14 timeliness.

15 MR. LYONS: I think the
16 relevance is pretty obvious since to
17 the extent that the EEOC was aware of
18 prepetition claims, potential
19 prepetition claims, and did nothing
20 for 13 months from the time that
21 Mr. Straughter walked in the door,
22 that that goes directly to excusable
23 neglect.

24 MR. SCHWARTZ: I'm not sure
25 that I follow, but --

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2 Q If I look at Paragraph No. 20 to
3 Exhibit M to your declaration, it states,
4 respondent will create a \$200,000 fund to provide
5 for compensatory damages for any and all
6 individuals who have been required to sign an
7 unlawful medical release at any time from

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8 January 1, 2005 to the present.

9 were you involved in assessing the
10 adequacy of a \$200,000 fund to provide
11 compensatory damages for any and all individuals
12 who had been required to sign an unlawful medical
13 release at any time from January 1, 2005 to the
14 present?

15 MR. SCHWARTZ: Objection.

16 Privileged.

17 Q Do you know the basis for setting a
18 \$200,000 figure to compensate any and all
19 individuals who may have been harmed by reason of
20 the failure to sign a medical release?

21 MR. SCHWARTZ: Objection.

22 Privileged.

23 Q Are you aware of any Delphi
24 employees who were harmed by Delphi's alleged
25 requirement to sign a medical release, other than

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2 Mr. Straughter?

3 MR. SCHWARTZ: Objection.

4 Privileged.

5 Q Do you know whether at the time
6 Mr. Straughter filed his charge of discrimination
7 whether any Delphi employees suffered harm as a
8 result of Delphi's alleged policy to require
9 employees to sign medical release forms?

10 MR. SCHWARTZ: You're asking
11 if she knew it at the time or if there

IC0225b.txt
12 were folks who were injured at the
13 time?
14 Q As you sit here today, as you sit
15 here today, are you aware of any Delphi employees
16 that suffered harm as a result of Delphi's alleged
17 policy to require medical release forms from
18 employees?
19 MR. SCHWARTZ: This is aside
20 from the ones your own client has
21 identified in response to request for
22 information or including those folks?
23 MR. LYONS: Any employees.
24 MR. SCHWARTZ: I think that
25 she identified those people before.

33

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2 THE WITNESS: There were, I
3 believe, three other individuals
4 identified in Delphi's response to a
5 request for information.
6 Q And we'll turn to that. Other than
7 those three individuals, are you aware of any
8 other Delphi employees who suffered harm based
9 upon Delphi's alleged policy to require medical
10 release forms?
11 MR. SCHWARTZ: Objection.
12 Privileged.
13 Q Paragraph No. 21 of your declaration
14 refers to steps that the EEOC must take before
15 filing a federal court action to remedy alleged
16 violations of the ADA. What is the basis of your

IC0225b.txt

17 knowledge of the statements made in Paragraph No.
18 21 of your declaration?

19 A The regional's attorney manual
20 reflects those steps.

21 Q Do you have any other basis for your
22 statements made in Paragraph No. 21 of your
23 declaration?

24 MR. SCHWARTZ: Objection to
25 the form.

34

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2 Q You can answer.

3 A I'm aware of the steps we have to
4 take because of my jobs a trial attorney of the
5 legal unit of the EEOC.

6 Q Are you aware of the steps -- are
7 you aware of any steps that the EEOC must take to
8 file a proof of claim in a bankruptcy case?

9 A I am aware of some of the steps,
10 yes.

11 Q what are those steps?

12 A I can only testify as to this case.

13 Q This case is your only source of
14 knowledge as to the steps?

15 A Yes.

16 Q To file a proof of claim?

17 A Yes.

18 Q And what are those steps?

19 A In this case, we had to mail our
20 proof of claims to kurtsman something or other in

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21 California.

22 Q Did you need to get advanced
23 authorization from the commissioner at EEOC
24 headquarters in Washington prior to filing your
25 proofs of claim?

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2 A No.

3 Q What authorizations do you need to
4 file a proof of claim in a bankruptcy case on
5 behalf of the EEOC?

6 A I'm not aware of any particular
7 authorizations that we require.

8 (Declaration of Margaret
9 Malloy was marked as Exhibit No. 3 for
10 identification on this date.)

11 Q Marked as Exhibit No. 3 is the
12 order -- well, I'll just refer to it as the bar
13 date order. Have you ever seen a copy of the bar
14 date order referenced in Exhibit No. 3?

15 A I don't recall.

16 Q Do you recall learning that there
17 was a bar date order entered in the Delphi
18 bankruptcy case?

19 A I have learned that.

20 Q When did you first become aware of a
21 bar date order entered in the Delphi's bankruptcy
22 case?

23 A I don't recall.

24 Q Is there anything that would refresh
25 your recollection?

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2 A I don't know what would refresh my
3 recollection.
4 Q Were you aware of the bar date order
5 before the EEOC lawsuit was filed in the Western
6 District of New York?
7 A I don't recall.
8 Q Who handles compliance with bar date
9 orders at the EEOC?
10 A I don't know.
11 MR. SCHWARTZ: Assumes facts
12 not in evidence.
13 Q How did the bar date order in
14 Delphi's case come to your attention?
15 A I don't recall.
16 Q Did you --
17 A It had to be a privileged
18 communication, though.
19 Q So you became aware of the bar date
20 order through communication with another attorney
21 at the EEOC?
22 MR. SCHWARTZ: Objection.
23 MR. LYONS: Fact of a
24 conversation isn't privileged.
25 MR. SCHWARTZ: Lacks

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2 foundation.

IC0225b.txt

3 Q What was the basis for your
4 statement that you believe if it came to your that
5 it was due to a privileged conversation?

6 A I don't know how else it would have
7 come to my attention.

8 Q Were you aware of the Delphi
9 bankruptcy case prior to filing your proofs of
10 claim?

11 A Yes.

12 Q Were you involved in the preparation
13 of the proofs of claim?

14 A Yes.

15 Q Did you have primary responsibility
16 for preparing and filing the proofs of claim?

17 A Yes.

18 Q Did you review the bar date order
19 before you filed the proofs of claim on behalf of
20 the EEOC?

21 A I don't recall.

22 Q And I believe your prior testimony
23 was that you did not recall learning of the bar
24 date order before the EEOC filed its lawsuit
25 against Delphi in the Western District of

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2 New York?

3 A I don't recall whether I did or not.

4 Q And you're not aware of anything
5 that would refresh your recollection on that?

6 A No.

7 Q Were you aware that all of Delphi's

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8 employees were served the bar date order?

9 A No.

10 Q Were you aware that not a single
11 Delphi employee filed a proof of claim alleging
12 any EEOC violation?

13 A No.

14 MR. SCHWARTZ: That's why we
15 have the EEOC.

16 Q Paragraph No. 21 refers to a
17 presentation memorandum?

18 A Paragraph No. 21 of the bar date
19 order?

20 Q I'm sorry. Paragraph No. 21 of your
21 declaration.

22 A Yes.

23 Q Your Paragraph No. 21 states, the
24 legal unit must prepare a presentation memorandum
25 to the general counsel containing its assessment

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2 of the case?

3 A Yes.

4 Q Does the presentation memorandum
5 contain such an assessment of the case?

6 A The presentation memorandum is
7 privileged.

8 Q Does it contain an assessment of the
9 case?

10 MR. SCHWARTZ: This one or
11 the --

IC0225b.txt

12 Q Does the presentation memorandum
13 referred to in Paragraph No. 21 of your
14 declaration contain an assessment of the EEOC case
15 filed in the Western District of New York?

16 MR. SCHWARTZ: Objection.
17 Privileged.

18 Q I'll just refer to presentation
19 memorandum relating to the case filed in the
20 Western district of New York against Delphi? Is
21 the presentation memorandum extensive?

22 MR. SCHWARTZ: Objection.
23 Privileged.

24 Q Does the presentation memorandum
25 describe the background and legal analysis

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2 involved in the case, including proof that
3 anticipates introducing but also to prepare a
4 breakdown of anticipated litigation costs?

5 MR. SCHWARTZ: Objection to
6 the form. Objection. Privileged.

7 Q So you are unable to confirm the
8 statements contained in Paragraph No. 21 on the
9 basis that such confirmation would be privileged?

10 A That's not a correct representation,
11 no.

12 Q Could you please confirm then that
13 the presentation memorandum is extensive?

14 A Paragraph No. 21 refers to
15 presentation memoranda in general and what is
16 required to be included in them. The questions

IC0225b.txt

17 you're asking, however, relate to the presentation
18 memorandum prepared in this case.

19 Q Was a presentation memorandum
20 presented to the general counsel for the Delphi
21 case?

22 A Yes.

23 Q And was that presentation memorandum
24 extensive?

25 MR. SCHWARTZ: Objection.

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2 Privileged.

3 Q Did the presentation memorandum that
4 the EEOC prepared with respect to the Delphi case
5 discuss proof that it anticipated introducing?

6 MR. SCHWARTZ: Objection.
7 Privileged.

8 Q Did the Delphi presentation
9 memorandum also contain a breakdown of an
10 anticipated litigation cost?

11 MR. SCHWARTZ: Objection.
12 Privileged.

13 Q Did the Delphi presentation
14 memorandum also include a draft of the complaint
15 to be filed?

16 MR. SCHWARTZ: Objection.
17 Privileged.

18 MR. LYONS: For the record, we
19 request a copy of that presentation
20 memorandum.

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21 MR. SCHWARTZ: I'm sure you'll
22 put that in writing.
23 MR. LYONS: It's on the record
24 here.
25 Q Paragraph No. 22 refers to a

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2 statement that the prefiling process unfolded very
3 quickly. What did you mean by that statement?
4 A Just what it says.
5 Q You have no further explanation of
6 the first sentence of Paragraph No. 22?
7 MR. SCHWARTZ: Objection to
8 the form.
9 Q You can answer.
10 A It simply refers to the time period
11 from the failure of conciliation to when we filed
12 the complaint.
13 Q And, again, the failure of
14 conciliation referenced in Paragraph No. 20 of
15 your declaration occurred on June 19, 2007?
16 A That's correct.
17 Q And the case was filed on
18 September 28, 2007?
19 A Correct.
20 Q Let's turn to Exhibit R to your
21 declaration which is the actual EEOC complaint.
22 In the nature of action paragraph, it refers to an
23 action under the ADA to correct unlawful
24 employment practices and to provide relief to
25 Stanley Straughter, who is defined as the charging

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2 party, and to a class of similarly-situated
3 individuals who had been adversely affected by
4 such practices.

5 Can you identify any
6 similarly-situated individuals who had been
7 adversely affected by the practices discussed in
8 the complaint?

9 MR. SCHWARTZ: Objection.
10 Privileged, except to the three that
11 Delphi identified.

12 Q As of the time that Mr. Straughter
13 made his charge of discrimination in September of
14 2006, was the EEOC aware of any other
15 similarly-situated individuals who had been
16 adversely affected by the practices discussed in
17 the EEOC complaint?

18 MR. SCHWARTZ: You're asking
19 if -- I'm sorry. I didn't understand
20 it at all.

21 Q As of the time Mr. Straughter filed
22 his charge of discrimination in September 2006,
23 was the EEOC aware of any similarly-situated
24 individuals who were adversely affected by the
25 practices discussed in the EEOC's complaint?

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2 MR. SCHWARTZ: And now you're

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3 asking if they were aware of it prior
4 to Mr. Straughter filing his complaint
5 or if they were aware of individuals'
6 complaints prior to the filing of
7 Mr. Straughter's complaint.

8 MR. LYONS: As of the time
9 Mr. Straughter filed his charge of
10 discrimination in September 2006.

11 THE WITNESS: I'm totally lost
12 now.

13 Q Okay. One more time. One more
14 time. At the time that Mr. Straughter filed his
15 charge of discrimination in September of 2006, was
16 the EEOC aware of any other similarly-situated
17 individuals who were adversely affected by the
18 policies discussed in the EEOC's complaint?

19 A I can't testify as to that. My
20 knowledge of this case is derived from the
21 investigative file in this case. If other charges
22 were filed, our charge filing process is
23 confidential. Delphi would be aware of that.

24 Q So your answer is no?

25 A My answer relates only to my

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2 knowledge. I can't testify as to the agency's
3 knowledge.

4 Q What of your knowledge derived from
5 the Straughter file that the EEOC maintains?

6 A There's nothing --

7 MR. SCHWARTZ: That wasn't a

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8 question.

9 MR. LYONS: It is a question

10 because --

11 MR. SCHWARTZ: Ask the whole

12 question.

13 Q Does the EEOC's file that is
14 maintained for the Straughter charge reveal any
15 other similarly-situated individuals who have been
16 adversely affected by the practice described in
17 the EEOC complaint?

18 MR. SCHWARTZ: That is a
19 totally different question. Before,
20 you were asking whether anyone had
21 complaints prior to Mr. -- I just want
22 you to realize that you're changing
23 the question, so when I object to it
24 you don't think I'm trying to get in
25 the way.

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2 You were asking before whether
3 they were aware prior to
4 Mr. Straughter's complaint if anyone
5 else had complained, and she said she
6 was not personally aware. And now
7 you're asking if anyone was injured.

8 MR. LYONS: Let me back up.

9 MR. SCHWARTZ: Yes.

10 Q Prior to December 26, 2006, your
11 knowledge of the Straughter matter and any other

IC0225b.txt
12 related plaintiffs is limited to the file the EEOC
13 maintains for the Straughter matter; correct?

14 A Well, I still don't understand the
15 question.

16 MR. LYONS: Read the question
17 again.

18 (Whereupon, the following was
19 read into the record by the reporter:

20 "Question: Prior to
21 December 26, 2006, your knowledge of
22 the Straughter matter and any other
23 related plaintiffs is limited to the
24 file the EEOC maintains for the
25 Straughter matter; correct?

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2 MR. SCHWARTZ: Objection to
3 form.

4 THE WITNESS: I don't
5 understand the question.

6 Q I'll try it one more time or a
7 couple more times.

8 A Try it differently because I really
9 don't understand.

10 Q As of the time Mr. Straughter filed
11 his charge of discrimination with the EEOC in
12 December of 2006, did the EEOC have any
13 information with respect to Delphi employees who
14 were adversely affected by Delphi's alleged policy
15 of requiring medical releases?

16 MR. SCHWARTZ: Objection to
Page 40

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17 form and to foundation.

18 THE WITNESS: I believe you

19 meant to say September 2006.

20 Q September 2006.

21 A And I can't -- I have no knowledge

22 as to that. I can't testify as to anything

23 outside of Mr. Straughter's charge and the

24 investigative file related to that charge.

25 Q Fair enough. And just to be clear,

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2 Mr. Straughter's file did not indicate or identify

3 other Delphi employees who were adversely affected

4 by the practices described in the EEOC complaint?

5 MR. SCHWARTZ: Well,

6 objection. Privileged. If you want

7 to ask if other people had made

8 charges, that's fine.

9 Q Had other Delphi -- to follow up on

10 that, the instruction still stands. Understood.

11 But had other Delphi employees filed charges with

12 the EEOC at any time?

13 A I would have no knowledge of that.

14 Q We move on. If you could go to the

15 peripheral leaf which is Page No. 5 of the

16 complaint marked as Exhibit R to your declaration.

17 In the event the EEOC prevails in its lawsuit and

18 obtains compensatory relief, that compensatory

19 relief will only be provided to the affected

20 employees; correct?

IC0225b.txt

21 A what do you mean by affected
22 employees?
23 Q Employees that were subject to
24 Delphi's alleged ADA's violations.
25 A I don't think -- I think that's a

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2 question for the judge to answer.
3 Q Let me put it another way. The EEOC
4 isn't going to keep any amount it recovers from
5 Delphi; correct?
6 A No.
7 Q All the proceeds that it would
8 collect would go to aggrieved employees; correct?
9 A I can't really testify as to how we
10 would distribute proceeds.
11 Q In the EEOC's lawsuit, any
12 compensatory relief is being sought on behalf of
13 potentially-aggrieved Delphi employees?
14 A That's correct.
15 Q Why did the EEOC wait until
16 November 2007 to file proofs of claim in the
17 Delphi case when it became aware of
18 Mr. Straughter's charge in September of 2006?
19 MR. SCHWARTZ: Objection.
20 Privileged.
21 THE WITNESS: It's October.
22 Q We file a month earlier than I
23 thought. So are you in a position to discuss any
24 of the facts and circumstances relating to
25 Mr. Straughter's charge of discrimination that

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2 existed in September 2006?

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MR. SCHWARTZ: Objection to
form.

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THE WITNESS: It seems like an
argumentative question to me. If you
want to ask me about facts and
circumstances, then I can tell you on
an individual basis whether I'm
prepared to answer those questions.

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Q Beyond reviewing the contents of
files maintained for the Straughter matter, do you
have any personal knowledge of any of the events
discussed in your declaration?

15

16

A We've gone through my declaration
paragraph by paragraph.

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MR. SCHWARTZ: And she
testified that she was involved in
certain aspects.

20

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Q And I believe the first aspects you
were involved in followed the transmittal letter
of the EEOC?

23

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A I don't think I testified as to
that, no.

25

Q well, why don't you tell me, what's

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the first paragraph in your declaration that

IC0225b.txt

3 contains facts of which you have personal
4 knowledge?

5 A Paragraph No. 1.

6 Q Any other paragraphs?

7 A Paragraph No. 2, Paragraph No. 3.

8 Are you waiting for me to keep going?

9 Q Please.

10 MR. SCHWARTZ: I object to the
11 form of this question.

12 THE WITNESS: I believe I
13 testified I don't recall at what point
14 I became involved, and I believe I
15 testified that it was sometime before
16 May 22, 2007.

17 Q But which paragraph do you first
18 have personal knowledge of facts contained in that
19 paragraph?

20 A I don't recall which would be the
21 first one.

22 Q Are there any paragraphs in your
23 declaration, other than Paragraph Nos. 1 through 3
24 that contained facts of which you have personal
25 knowledge?

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2 A The paragraphs are written based on
3 the investigative file. So, for example,
4 Paragraph No. 15 is based on documents in the
5 investigative file.

6 Q Please answer my question.

7 A Can you repeat your question.

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8 Q Please identify paragraphs that
9 contain facts based upon your personal knowledge,
10 other than Paragraph Nos. 1 through 3.

11 A All I can say again is I don't
12 recall at what time I became involved in the case.

13 Q That's not my question. My question
14 is which paragraphs contain facts based upon your
15 personal knowledge, other than Paragraph Nos. 1
16 through 3?

17 A All I can say is that Paragraph Nos.
18 1 through 3 are based on my personal knowledge.
19 The remaining paragraphs reflect documents in the
20 EEOC's investigative file and other documents.

21 Q And are not based upon your personal
22 knowledge?

23 A No, I won't say that.

24 Q Well, please answer then what
25 paragraph contain facts based upon your personal

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2 knowledge other than Paragraph Nos. 1 through 3?

3 A I've already answered to the best of
4 my ability.

5 Q So you are not going to answer --
6 you're not going to identify factual assertions
7 contained in your declaration based upon your
8 personal knowledge other than Paragraph Nos. 1
9 through 3?

10 MR. SCHWARTZ: Objection.

11 Q There is a pending question.

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12 A I did not rely on privileged
13 information to prepare this document -- to prepare
14 this declaration. For me to answer your question
15 would require me to review privileged information.
16 So if that answers your question that the
17 declaration is prepared based on documents, aside
18 from Paragraph Nos. 1 through 3, then that's my
19 answer.

20 Q And not based upon your personal
21 knowledge?

22 A Aside from Paragraph Nos. 1 through
23 3?

24 MR. SCHWARTZ: You're asking
25 now the basis for the declaration as

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2 opposed to whether she has personal
3 knowledge of the events. Very
4 different question.

5 MR. LYONS: My question has
6 been very precise.

7 MR. SCHWARTZ: It really
8 hasn't.

9 MR. LYONS: It has. I'll do
10 it one more time.

11 Q Please identify any factual
12 assertions in your declaration based upon your
13 personal knowledge, other than Paragraph Nos. 1
14 through 3?

15 MR. SCHWARTZ: Objection to
16 form.

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17 THE WITNESS: Paragraph No.
18 22, I have personal knowledge of facts
19 in that paragraph.
20 Q All of the facts?
21 A That is based on that paragraph, I
22 have to read it. I have personal knowledge of
23 those facts.
24 Q Paragraph No. 23?
25 A I have personal knowledge of those

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2 facts.
3 Q Paragraph No. 24?
4 A I have personal knowledge of those
5 facts.
6 Q Paragraph No. 25?
7 A I have personal knowledge of those
8 facts.
9 Q Paragraph No. 26?
10 A I have personal knowledge of those
11 facts.
12 Q And Paragraph No. 27?
13 A I don't have personal knowledge of
14 all of those facts.
15 Q What about first sentence of
16 Paragraph No. 27?
17 A I have personal knowledge of that.
18 Q The second sentence?
19 A I wouldn't really say that that's a
20 fact.

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21 Q Fair enough. The third sentence?
22 A I have no personal knowledge of
23 that. No, I have no personal knowledge of that.
24 Q And the last sentence of Paragraph
25 No. 27?

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2 A I only have partial personal
3 knowledge.
4 Q And what's the partial personal
5 knowledge?
6 A I have personal knowledge of filing
7 the enforcement action and filing the claims of
8 the bankruptcy.
9 Q But no personal knowledge of the
10 prompt investigation?
11 A My knowledge of the investigation is
12 based on the investigative file.
13 Q So other than Paragraph Nos. 1
14 through 3, Paragraph Nos. 22, 23, 24, 25, 26, and
15 parts of 27, you do not have personal knowledge of
16 the assertions in your declaration?
17 MR. SCHWARTZ: Objection.
18 THE WITNESS: That's not what
19 I was saying. I want to make a
20 correction as to Paragraph No. 2.
21 Q First the correction.
22 A I think I stated that my knowledge
23 of the investigation is based upon the
24 investigative file. The facts that I assert in
25 the declaration are based on the facts in the

IC0225b.txt

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2 investigative file.

3 Q And my questions have presumed other
4 than the investigative file, whether you have
5 personal knowledge of the assertions?

6 MR. SCHWARTZ: I think you're
7 missing the distinction she's drawing,
8 which is the same one I tried to draw
9 and you're about to get as she
10 clarifies.

11 THE WITNESS: And that's what
12 I keep trying to say. If I have other
13 personal knowledge, it's privileged.
14 The facts asserted in this declaration
15 as I've described them are based on
16 facts in the investigative file.

17 MR. SCHWARTZ: Do you
18 understand difference? In other
19 words, the declaration was written on
20 the basis of the investigative file.
21 That says nothing about whether or not
22 Ms. Malloy also has personal knowledge
23 of some of those events. It's talking
24 about that basis for the assertions in
25 the declaration.

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2 Q And to clarify, my questions were

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3 based on your personal knowledge, not knowledge
4 derive from what's in the file.

5 MR. SCHWARTZ: No. Your
6 question was whether the basis for the
7 assertions in the declaration was
8 personal knowledge, which is not the
9 investigative file. And I think we
10 all understood that, and that was the
11 answer.

12 MR. LYONS: Yes.

13 MR. SCHWARTZ: But that
14 doesn't mean that she doesn't have
15 personal knowledge about some of the
16 events that are described in some of
17 those paragraphs. For example, take
18 one that we know that she doesn't have
19 personal knowledge of, something that
20 happened before she was hired. On
21 August 28, 2006 the national call
22 center was first contacted.

23 The basis for putting that in
24 the declaration, what you've heard,
25 was a review of the investigative

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2 file. That doesn't mean, however,
3 that she doesn't also have personal
4 knowledge of the August 28, 2006 call.
5 That just means that wasn't the basis
6 for including it as an assertion in
7 the declaration. Do you understand

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8 that now?

9 MR. LYONS: No.

10 Q Do you have personal knowledge of
11 the August 28th call?

12 A As he said, let's use an example of
13 one that we all know Ms. Malloy does not have
14 personal knowledge of.

15 MR. SCHWARTZ: Because ones
16 that she actually does have personal
17 knowledge of, that's all going to be
18 privileged. So the declaration was
19 specifically drafted so as not to rely
20 on that privileged information.

21 MR. LYONS: My question were
22 what is your personal knowledge. If
23 you believe your revelation of your
24 personal knowledge is going to be
25 privileged, then you make a note of

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2 privilege and instruct your witness
3 not to answer.

4 MR. SCHWARTZ: That wasn't
5 your question.

6 THE WITNESS: I think the
7 record speaks for itself.

8 MR. LYONS: I think the
9 question speaks for itself, too.

10 MR. SCHWARTZ: I think it
11 speaks for two different things.

IC0225b.txt
THE WITNESS: Well, I answered

12
13 the question, and I think the
14 objections were made.

15 Q Let's turn to the proof of claim
16 that was filed, which was Exhibit S to your
17 declaration. In that proof of claim, it states
18 debt was incurred May 21, 2004.

19 What's the basis for the EEOC's
20 assertion that Delphi's debt to it was incurred
21 May 21, 2004?

22 A I don't recall. It had to be
23 something in the investigative file, but I don't
24 recall as I sit here.

25 Q As long as we have Exhibit S in

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2 front of us, that's your signature?

3 A Yes, it is.

4 Q And that's the proof of claim that
5 you recall being filed?

6 A That I recall filing, yes.

7 Q From the time Mr. Straughter his
8 charge of discrimination through the date the EEOC
9 filed its proofs of claim, what new facts came to
10 the EEOC's attention regarding the alleged policy
11 that violated the ADA?

12 MR. SCHWARTZ: Objection.
13 Privileged. I mean other than facts
14 that Delphi itself produced back to
15 the EEOC or that have been disclosed
16 in discovery and enforcement

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17 proceedings in the Western District of
18 New York.

19 Q What is the basis for the EEOC's
20 assertion that it acted with excusable neglect in
21 filing proofs of claim after the Delphi bar date?

22 MR. SCHWARTZ: Objection.

23 THE WITNESS: I believe the
24 basis for our assertion is set forth
25 in the memorandum of law in our

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2 position to Delphi's motion.

3 Q Any other bases not set forth in the
4 memorandum?

5 MR. SCHWARTZ: She's only a
6 person. She's not a 30(b)(6) witness
7 testifying on behalf of the EEOC.

8 MR. LYONS: Wait a second.
9 You're to declare who's testifying in
10 support of excusable neglect?

11 MR. SCHWARTZ: Sure.

12 Q So, again, are there any other bases
13 of excusable neglect, other than in your
14 memorandum that the EEOC filed of which you are
15 aware?

16 A I think the memorandum covers it,
17 including the fact that Mr. Straughter did not
18 even come to the EEOC. I believe it was after the
19 bar date already at that time, and his claim in
20 any event is not a prepetition claim.

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21 A I want to correct something as far
22 as personal knowledge here.
23 Q Did I want to?
24 A I did, yes. I do also have personal
25 knowledge of the contents of the EEOC's regional

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2 attorneys' manual. I have read it.
3 Q Okay. Thank you. Generally
4 speaking, for an employee to recover front or back
5 pay, does the employee have to be terminated by
6 some wrongful act of the employee?
7 MR. SCHWARTZ: Objection to
8 the form.
9 THE WITNESS: No.
10 Q What other instances can they get
11 front and back pay?
12 A Someone could be paid a lower rate,
13 for example, than they should be being paid.
14 Q Any other basis to get front and
15 back pay?
16 A You're asking for my legal opinion.
17 MR. SCHWARTZ: Objection. I
18 will send the research on the ADA.
19 They could potential recover lost
20 wages for wrongful termination,
21 failure to get a promotion or other
22 pay grade. If someone, for example,
23 was not credited for sick leave, those
24 days might be recoverable. There's
25 all sorts of things that are

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potentially recoverable.

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Q Other than the list mentioned by
counsel, is there any other basis to get front and
back pay, to your knowledge?

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A If someone was suspended without
pay, for example.

8

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Q Any other basis to get front and
back pay?

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12

A I would have to research it. That's
what I can think of sitting here right now.
Constructive discharge.

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Q Are you aware whether any employee
suffered any of the litany of consequences based
upon Delphi's alleged policy to require medical
release forms referenced in the EEOC complaint?

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18

A Stanley Straughter.

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MR. SCHWARTZ: Objection.
It's privileged, other than the three
individuals that Delphi disclosed.

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MR. LYONS: Just so it's
clear, you're instructing privilege
with respect to anybody other than
Straughter or the three employees that

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Delphi disclosed?

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MR. SCHWARTZ: Correct.

THE WITNESS: But I think I
can say that -- I'm sorry. I can't.
We're in discovery in the federal
court action.

MR. SCHWARTZ: Yes, the
investigation is ongoing, but --

THE WITNESS: I've provided my
initial disclosures to Delphi.

MR. SCHWARTZ: That's okay.

Q But I'm just clarifying you're
refusing to answer the question. Let me rephrase
that.

MR. LYONS: You're instructing
the witness not to identify other
Delphi employees suffering the adverse
acts from Delphi's alleged medical
release form policy based upon the
three privileges?

MR. SCHWARTZ: I don't think I
can assert deliberative process on
this one, but work product and
attorney-client, yes. And I'll say

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also I think in a very real sense, all
Delphi employees who are subject to
that illegal policy are harmed by it.
Even those that comply with it are
harmed by it.

THE WITNESS: That reflects

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8 our position.

9 MR. LYONS: I think we had a
10 clear answer, but I'm not sure.

11 MR. SCHWARTZ: We will not
12 disclose with specificity Delphi
13 employees, other than Mr. Straughter
14 and the three employees Delphi
15 disclosed back to the EEOC that were
16 harmed by the policies.

17 MR. LYONS: And when you mean
18 disclose with specificity, you won't
19 identify?

20 MR. SCHWARTZ: I won't give
21 you their names, correct.

22 Q Do such employees exist?

23 A I can't answer that question.

24 That's information that's within Delphi's control.

25 Q Well, to the EEOC's knowledge, do

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2 any employees, not by name, but do any other
3 Delphi employees, other than Mr. Straughter or the
4 three disclosed in Delphi's information statement,
5 exist that suffered harm as a result of Delphi's
6 alleged illegal policy?

7 A I have every reason to believe that
8 Delphi has subjected numerous employees to this
9 illegal policy, so, yes, those employees exist.

10 Q Well, explain this every reason?

11 A Delphi indicated in the

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12 investigation and papers that you have in front of
13 you that it subjects every employee who is out
14 sick to this illegal inquiry.

15 Q And have employees suffered harm as
16 a result of this allegedly illegal policy, in the
17 EEOC's view?

18 A Yes.

19 Q Has the EEOC quantified that harm on
20 an individual-by-individual basis?

21 MR. SCHWARTZ: Objection to
22 the form.

23 THE WITNESS: We have an
24 obligation under Rule 26 of the
25 Federal Rules of Civil Procedure to

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2 disclose to Delphi individuals with
3 knowledge of the claim in this case
4 and calculation of their damages. We
5 have satisfied our obligations under
6 that rule.

7 Q So --

8 A We have an ongoing obligation,
9 however.

10 Q So all of EEOC's information on
11 individual employees who suffered harm is
12 reflected in the Rule 26 disclosures?

13 A We haven't had discovery in that
14 case yet, so --

15 Q So the EEOC has made no disclosures
16 to date?

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17 A We have made Rule 26 disclosures,
18 yes.

19 Q And those disclosures have
20 identified the universe of employees who have
21 suffered harm as a result of Delphi's allegedly
22 illegal policies?

23 A Oh, no, I certainly wouldn't say
24 that.

25 Q Then I'm not following.

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2 A We don't have access to that
3 universe.

4 Q That's my question. To the EEOC's
5 knowledge -- again, I preface my question to the
6 EEOC's knowledge. The EEOC has disclosed
7 employees who the EEOC is aware may have suffered
8 damages as a result of Delphi's illegal policies?

9 A Yes.

10 Q The EEOC hasn't failed to disclose
11 someone who the EEOC is aware of who has suffered
12 harm as a result of Delphi's illegal policies?

13 A No.

14 MR. LYONS: I think I'm done.

15 (Whereupon, the deposition
16 concluded at 9:27 p.m.)

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C A P T I O N

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4 The Deposition of MARGARET MALLOY, taken in the
5 matter, on the date, and at the time and place set
6 out on the title page hereof.

7

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9 It was requested that the deposition be taken by
10 the reporter and that same be reduced to
11 typewritten form.

12

13

14 It was agreed by and between counsel and the
15 parties that the Deponent will read and sign the
16 transcript of said deposition.

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2 C E R T I F I C A T E
3
4 STATE OF _____:
5 COUNTY/CITY OF _____:
6
7 Before me, this day, personally appeared
8 MARGARET MALLOY, who, being duly sworn, states
9 that the foregoing transcript of his/her
10 Deposition, taken in the matter, on the date, and
11 at the time and place set out on the title page
12 hereof, constitutes a true and accurate transcript
13 of said deposition.
14
15
16 _____
17 MARGARET MALLOY
18
19 SUBSCRIBED and SWORN to before me this _____
20 day of _____, 2007, in the
21 jurisdiction aforesaid.
22
23
24 _____
25 My Commission Expires _____ Notary Public

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2 DEPOSITION ERRATA SHEET

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3 RE:
FILE NO.
4 CASE CAPTION: IN RE: DELPHI
5 DEPONENT: MARGARET MALLOY
DEPOSITION DATE: FEBRUARY 25, 2008
6
To the Reporter:
7 I have read the entire transcript of my Deposition
taken in the captioned matter or the same has been
8 read to me. I request for the following changes
be entered upon the record for the reasons
9 indicated.
I have signed my name to the Errata Sheet and the
10 appropriate Certificate and authorize you to
attach both to the original transcript.
11 _____
12 _____
13 _____
14 _____
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23 _____
24 SIGNATURE: _____ DATE: _____
25 MARGARET MALLOY

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2	I N D E X	
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4	E X H I B I T S	
5		
6	Malloy For Ident.	Description Page
7	1	Declaration of Margaret Malloy. 8

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8	2	Exhibits to declaration of Margaret	8
9		Malloy.	
10	3	Declaration of Margaret Malloy.	35
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2	C E R T I F I C A T E
3	STATE OF NEW YORK)
4) ss.
5	COUNTY OF NEW YORK)
6	I, I. IRIS COOPER, a Shorthand
7	(Stenotype) Reporter and Notary Public
8	of the State of New York, do hereby
9	certify that the foregoing Deposition,
10	of the witness, MARGARET MALLOY, taken
11	at the time and place aforesaid, is a

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12 true and correct transcription of my
13 shorthand notes.

14 I further certify that I am
15 neither counsel for nor related to any
16 party to said action, nor in any wise
17 interested in the result or outcome
18 thereof.

19 IN WITNESS WHEREOF, I have
20 hereunto set my hand this 27th day of
21 February, 2008.

22

23

24 _____
I. Iris Cooper

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